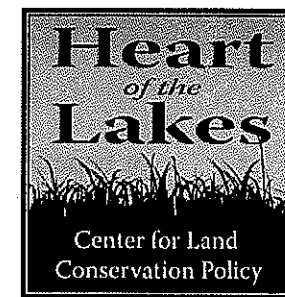


Testimony in Support of Senate Bill 805

Senate Finance Committee
The Honorable Jack Brandenburg, Chair
September 12, 2012



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Members of the Senate Finance Committee:

Thank you for the opportunity to speak to you today in support of Senate Bill 805. My name is Julie Stoneman and I represent Heart of the Lakes Center for Land Conservation Policy, the statewide coalition of Michigan's nonprofit land conservancies and those organizations dedicated to the conservation of Michigan's environmentally and economically significant natural, scenic, farm and forestlands. Our 28 member land conservancies work with willing landowners and use voluntarily donated conservation easements and other tools to permanently protect important conservation lands.

SB 805 is an administrative change to address an unforeseen issue when we worked with then Senator Michelle McManus on the passage of Public Act 446 in 2006. PA 446 amended Michigan's property tax law to add to the list of exempt transfers those lands which are subject to qualified conservation easements, thus avoiding the "uncapping" of property taxes on land held exclusively for conservation purposes.

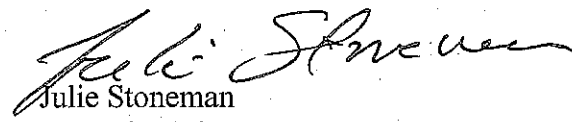
After the passage of PA 446, there was some confusion about when the transfer occurs for property tax purposes. In 2009, the Attorney General issued an opinion that the transfer of land occurs at the time of death even though the property itself, for real property and probate purposes, is not transferred until the estate or trust issues the deed. But if the transfer occurs at death, an easement by will or trust cannot be in place at that time and therefore the land is subject to the pop-up tax. That was an unintended consequence as there are many reasons why individuals may want to designate an easement by will or trust. SB 805 addresses this particular circumstance that was not foreseen at the time the law was enacted in 2006, and provides the time needed to put the conservation easement on the property as directed by the landowner through his or her will or trust. While we do not anticipate that this change would be far-reaching, in the instances where it would apply, beneficial land conservation would be the result.

We would also like to point out that SB 805 provides an opportunity to align state policy with federal with one additional change. Under federal law, when a landowner dies without having donated a conservation easement, even in the absence of a will or trust that provides direction to establish a conservation easement, the landowner's heirs may be allowed to elect to donate a conservation easement on the inherited lands and get estate tax benefits *post-mortem*, subject to certain qualifications under Sec. 2031(c) of the Internal Revenue Code. If the heirs are making the donation, the executor must make an irrevocable election to take the benefits. The executor

or beneficiaries must place the easement on the land before the filing of estate taxes—usually nine months from the death of the decedent.

By including “intestate succession” in the bill, that mirrors federal law, in addition to “will” and “trust”, SB 805 would align Michigan and federal law and give heirs more flexibility to ensure that family lands that have valuable conservation benefits can remain in the family and are not disposed of due to the uncapping of property taxes.

We believe SB 805 is a straightforward administrative change that preserves the right of a landowner to do through their estate what they are allowed to do in life by extending PA 446 of 2006 to exempt conservation donations by will and from the “pop-up” tax. We wish to thank the sponsor and co-sponsors of the bill and greatly appreciate this committee’s consideration of SB 805. We urge your support to move it to the full Senate for their approval. I would be happy to answer any questions you might have.



Julie Stoneman
Executive Director